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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees

Implementation of Section 257 of the Communications Act — Elimination of Market Entry Barriers

) WT Docket No. 96-148

) GN Docket No. 96-113

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To: The Commission

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~~RECALL COMMENTS ON THIS DOCKET~~
~~STATE OF MICHIGAN~~
COMMENTS OF BELLSOUTH

BellSouth Corporation ("BellSouth"), by its attorneys, hereby submits these comments in response to the Commission's *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-148 & GN Docket No. 96-113, FCC 96-474 (released December 20, 1996), summarized, 62 Fed. Reg. 653 (1997). In the *Further Notice*, the Commission has asked for comment on adopting partitioning and disaggregation rules for cellular and General Wireless Communications Services ("GWCS") licensees similar to those adopted in the *Report and Order* for broadband personal communications service ("PCS") licensees. In these comments, BellSouth addresses the Commission's proposals concerning cellular carriers.

DISCUSSION

In the Commission's *Report and Order*, the Commission broadened its rules to permit geographic partitioning and disaggregation for broadband PCS licensees. The Commission is now

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examining whether to extend partitioning and disaggregation to other services.¹ BellSouth supports this trend and believes that partitioning and disaggregation should not be limited solely to certain groups, such as rural telephone companies. Specifically, as discussed herein, BellSouth supports the Commission's tentative conclusion that it is now appropriate to extend full partitioning and disaggregation to the Cellular Radiotelephone Service.²

I. Partitioning and Disaggregation for Cellular

Although partitioning is currently allowed for cellular licensees, under the current rules it is permitted only during the five year build-out period. Specifically, Section 22.947(b) of the Commission's rules states that during the five year build-out period a cellular licensee may partition portions of its cellular market to other eligible parties, and the parties are free to define the license area or "CGSA" of the newly partitioned cellular system.³ Such a restriction is not imposed upon broadband PCS licensees.⁴ Accordingly, BellSouth disagrees with the Commission's conclusion that the cellular partitioning rule is sufficiently flexible,⁵ and recommends that it be modified to remove the five year build-out restriction to bring it into conformance with the standards recently adopted for broadband PCS.

¹ See *Further Notice* at ¶ 93.

² See *id.* at ¶ 94.

³ See 47 C.F.R. § 22.947(b).

⁴ See 47 C.F.R. § 24.714(a)(2) (allowing broadband PCS licensees in spectrum blocks A, B, D, and E to partition their licensed geographic service area at any time following grant of their licenses); cf. 47 C.F.R. § 24.714(a)(3) (stating that during the first five years of the license term, broadband PCS licensees in spectrum blocks C and F can partition only to certain eligible entities, with no stated restrictions thereafter).

⁵ See *Further Notice* at ¶ 98.

Unlike cellular partitioning, there are currently no rules on cellular disaggregation. Accordingly, the Commission has asked for comment regarding whether to permit cellular disaggregation.⁶ BellSouth supports cellular disaggregation and agrees with the Commission that regulatory changes, such as the Commission's recent conclusion that cellular providers should have the flexibility to provide both fixed and mobile services,⁷ will create a demand for cellular disaggregation.

BellSouth does not support, however, the adoption of "interim" disaggregation rules for cellular in anticipation of such regulatory changes.⁸ Instead, BellSouth believes that technical and regulatory conditions should allow market opportunities for cellular disaggregation immediately. The adoption of "interim" rules would be an additional and unnecessary burden with no corresponding public benefit. Because the Commission has already established PCS rules for disaggregation in this proceeding, regulatory parity supports the application of these same rules to the cellular industry immediately.

In addition, extending these rules to cellular licensees will bring immediate benefits to the public. As the Commission found with PCS carriers, these rules will provide cellular licensees "with the flexibility they need to tailor their service offerings to meet market demands."⁹ Moreover, competition will increase as the result of new players entering the market, including carriers which

⁶ *Id.* at ¶ 95.

⁷ See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rule Making, 11 F.C.C.R. 8965 (1996).

⁸ See Further Notice at ¶ 95.

⁹ See *id.* at ¶ 94; see also Report and Order at ¶ 2.

may have previously been foreclosed from participation due to financial constraints.¹⁰ Finally, the provision of new cellular services, such as niche services and in-building wireless networks, will be expedited to areas that might not otherwise receive such services.

II. There Should Be No Restrictions on the Amount of Cellular Spectrum Which May Be Disaggregated

The Commission also seeks comment regarding whether minimum disaggregation standards are necessary for cellular.¹¹ Currently, cellular licenses are issued for a 25 MHz block of spectrum.¹² In the PCS context, the Commission just concluded that "there should be no restriction on the amount of broadband PCS spectrum that can be disaggregated."¹³ The Commission stated that allowing flexibility in the amount of spectrum to be disaggregated will encourage more efficient use of spectrum and will permit deployment of a broader array of service offerings, both of which will increase competition.¹⁴ For the same reasons, BellSouth believes that no minimum standards are necessary for the cellular industry. Applying the same disaggregation rules to cellular as have been adopted for PCS is also required to achieve regulatory parity for like services.

III. Combined Cellular Partitioning and Disaggregation Should be Allowed

BellSouth supports the Commission's proposal to permit combined partitioning and disaggregation for cellular services, as it did for PCS.¹⁵ BellSouth believes that such combinations

¹⁰ "[P]artitioning and disaggregation may be used to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by small businesses, rural telcos, and minority- and female-owned businesses." *Further Notice* at ¶ 94; see also *Report and Order* at ¶ 2.

¹¹ *Further Notice* at ¶ 100.

¹² See *id.* (citing 47 C.F.R. § 22.905).

¹³ *Report and Order* at ¶ 49.

¹⁴ *Id.*

¹⁵ *Further Notice* at ¶ 101; *Report and Order* at ¶ 66.

are necessary to give cellular licensees the flexibility they need to react to market forces and demands for service relevant to their locations and service offerings. As the Commission found in the case of PCS, allowing combined partitioning and disaggregation will advance the goals of "providing competitive service offerings, encouraging new market entrants, and ensuring quality service to the public."¹⁸

IV. The Commission Should Adopt the Same Licensing Rules for Cellular Disaggregation As It Did for PCS

Finally, the Commission has requested comment regarding the method to be used for reviewing cellular disaggregation transactions.¹⁹ Because there are existing partial assignment rules for cellular,²⁰ the Commission has proposed to "utilize[e] partial assignment procedures, *similar to those adopted for broadband PCS*, to review cellular disaggregation . . . transactions."²¹ BellSouth believes that rather than applying "similar" rules for licensing cellular disaggregation, the Commission should adopt the *same* rules for the cellular industry as it recently applied to PCS.

Specifically, under the licensing scheme adopted for broadband PCS disaggregation: (1) the original licensee will file an FCC Form 490 signed by both parties; (2) the assignee will file an FCC Form 430, unless a current FCC Form 430 is on file for this party, along with an FCC Form 600 defining the market area being partitioned or disaggregated; and (3) all forms will be filed together

¹⁸ Report and Order at § 66.

¹⁹ Further Notice at § 112. As noted by the Commission, rules are currently in place which provide for Commission review of cellular partitioning transactions. Specifically, in lieu of partial assignment procedures, the partitionee files an FCC Form 600 application for a new cellular system covering the partitioned market. *Id.*; see 47 C.F.R. § 22.947(b).

²⁰ See 47 C.F.R. § 22.137(c).

²¹ Further Notice at § 113 (emphasis added).

as one package under cover of the FCC Form 490.²⁹ Because these rules do not depart greatly from the partial assignment rules currently in place for cellular,³⁰ these procedures should be easy to administer and will provide an appropriate mechanism for reviewing cellular disaggregation proposals.

²⁹ *Report and Order* at ¶ 67.

³⁰ *See Further Notice* at ¶ 113.

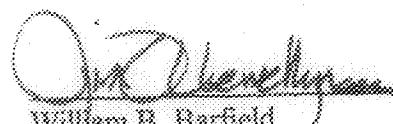
CONCLUSION

For the foregoing reasons, BellSouth urges the Commission adopt the rules and policies expressed herein.

Respectfully submitted,

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February 10, 1997

CERTIFICATE OF SERVICE

I, Phyllis Martin, hereby certify that I have, this 10th day of February, 1997, served by hand delivery a copy of the foregoing "Comments of BellSouth" in response to the *Further Notice of Proposed Rulemaking* in WT Docket No. 96-148, upon the following:

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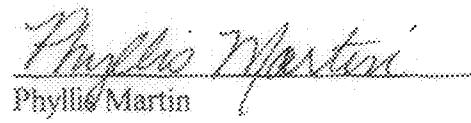
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